Pac. 133. (2) The second theory is that the surety holds the securities in order to be sure of *exoneration* (and not merely *reimbursement*), and the best way to secure this is to let him assign the securities to the creditor, or to let the creditor himself collect by direct action. This theory is not generally adopted, but if it is sound it would apply in the present case. No fund was deposited by the defendant with the surety company, as a trust fund, nor was the defendant's promise made to the surety company as *trustee*. Nevertheless, if the defendant's promise to the surety company was to save it harmless, to exonerate and not merely to reimburse, then the performance of the promise involves a payment directly to the creditor. The creditor might well be regarded as a third-party beneficiary. Complete exoneration of the surety company requires full settlement with the creditor, the fact that the surety company is insolvent being immaterial in this respect. This would perhaps be otherwise if the surety company has been totally dissolved. See *Hasbrouck v. Carr, supra.* On this theory, the rights of both the surety company and the creditor will be fully vindicated by action in the creditor's name against the defendant, without reference to the complexities of subrogation. To this action the surety company should be made a party.

TORTS—INJURY CAUSED BY FRIGHT—DAMAGES.—The defendant's chimpanzee escaped, entered the plaintiff's house and attacked her children. The plaintiff drove the animal away but became hysterical and ill because of fear for her own and children's safety. She sued the owner of the animal for the injuries caused by the fright. *Held,* that the plaintiff could recover. *Lindley v. Knowlton* (1918, Cal.) 176 Pac. 140.

No recovery can be had for pure fear not resulting in bodily effects. *Chittick v. Phila. Rapid Transit Co.* (1909) 224 Pa. 13, 73 Atl. 4; *Reed v. Ford* (1908) 33 Ky. L. Rep. 1029, 112 S. W. 600, 19 L. R. A. (N. S.) 255. Nor where the fear is wholly for the safety of a third person. *Sanderson v. Northern Pacific Ry.* (1902) 88 Minn. 162, 92 N. W. 542. By the weight of authority, fear for one's self which is followed by bodily suffering is ground for the recovery of damages. *McGee v. Vanover* (1912) 148 Ky. 737, 147 S. W. 742; *Samarra v. Allegheny Valley St. Ry.* (1913) 238 Pa. 468, 86 Atl. 287; *Denver R. Co. v. Roller* (1900, C. C. A. 9th) 100 Fed. 738; *contra, Mitchell v. Rochester* (1896) 151 N. Y. 107, 45 N. E. 354. Also fear may be considered as an operative element and affect the amount of damages when it results either from or in physical suffering, or produces a visible injury to the nervous system. *Watson v. Augusta B. Co.* (1903) 124 Ga. 121, 1 L. R. A. (N. S.) 1178, 110 Am. St. 157; *Conley v. United Drug Co.* (1914) 218 Mass. 238, 105 N. E. 975. On remoteness of mental anguish as barring recovery, see (1916) 25 YALE LAW JOURNAL, 243; on mental suffering for desecration of the dead, see (1916) 28 *ibid.* 508, and CURRENT DECISIONS, *infra, sub tit.* TORTS.

TORTS—LABOR UNIONS—BANNERING AND STRIKE—"RIGHT TO WORK IN ONE'S OWN BUSINESS."—The constitution of the defendant union excluded all theatre owners. The plaintiff, a theatre owner, insisted upon operating his own moving picture machines part of the time, to save expense. To force him to employ union men to do this work the union men ceased to work for him and the defendant union published in the official labor paper that the plaintiff was "unfair," and caused a banner bearing that message to be paraded in front of the theatre. The plaintiff, whose business fell off in consequence, applied for an injunction *pendente lite.* It was refused and the plaintiff appealed. *Held,* that the desire to force the plaintiff to replace his own services in his own business with those of the defendant's members was not such a motive as justified the defendant's acts injuring the plaintiff's business; but that the